U. S. Senate
Republican Policy
Committee

Larry E. Craig, Chairman Jade West, Staff Director

Legislative Notice

No. 4 March 6, 2001

S. J. Res. 6 – Disapproving Former President Clinton's Ergonomics Rule

Calendar No. 18

S. J. Res. 6 was discharged from the HELP Committee and placed on the Senate Calendar.

NOTEWORTHY

- The Senate may take up S. J. Res. 6 as early as today.
- Under the Congressional Review Act of 1996, S. J. Res. 6 would invalidate the Department of Labor's ergonomics regulation, published in the *Federal Register* November 14, 2000, and set to go into full effect in October 2001.
- S.J. Res. 6 reads: "Congress disapproves the rule submitted by the Department of Labor relating to ergonomics (published at 65 Fed. Reg. 68261 (2000)), and such rule shall have no force or effect."
- Under the Congressional Review Act, once a Senator introduces a joint resolution of disapproval, the resolution is referred to the committee of jurisdiction for 20 calendar days. If, during that time, 30 Senators file a discharge petition (as was the case with S. J. Res. 6), the resolution then is discharged and placed directly on the Senate Calendar.
- Once on the Calendar, the Majority Leader may call up the resolution. The Congressional Review Act provides that the motion to proceed to the resolution is nondebatable (*i.e.* no filibuster). Debate on the resolution itself is limited to 10 hours, equally divided, with no amendments in order.
- If S. J. Res. 6 passes the Senate (a simple majority is required), it is expected the House will take up the bill soon thereafter. In the event S. J. Res. 6 passes both houses and is signed by President Bush, the Clinton ergonomics regulation will be null and void.
- Disapproving this regulation would *not* prohibit the Department of Labor from revisiting ergonomics. However, the Congressional Review Act would forbid the promulgation of any regulation that is substantially the same as this one.

HIGHLIGHTS

On November 14, 2000, the Occupational Safety and Health Administration (OSHA) published its final ergonomics rule.

- OSHA's ergonomics rule is one of the broadest and most expensive ever issued by the federal government.

- This unworkable rule is over 600 pages in length and weighs more than two pounds.

- **A single "incident" would trigger enormous costs.** A single ergonomic "incident" would require employers to implement a full-blown, company-wide ergonomics program, including changing equipment, shortening shifts, and hiring more employees. An "incident" could be an employee who complains about cramping or stiffness for seven days and who on one day per week either uses a keyboard for separate periods of time that total four hours or raises his hands above his head for separate periods of time totaling two hours.

- **Employers would be responsible for injuries incurred outside of work.** The ergonomic "symptom" need not be caused at work, so long as work duties contribute to the injury. A manufacturer would be forced to set up an ergonomics program if a single assembly line worker injures himself playing football on the weekend and exacerbates his injury at work.

- **OSHA's ergonomics rule would nationalize workers' compensation.** Undeterred by Congress' reluctance to erect a national system of workers' compensation, this rule creates a federal workers' compensation system for musculoskeletal disorders. The rule tramples on states' ability to define what constitutes a work-related injury.

- **The rule is based on flimsy science.** A recent National Academy of Sciences study concluded physical exertion is just one of a number of factors — including job dissatisfaction — that contribute to ergonomic injuries. Yet OSHA's rule focuses only on physical exertion despite what the National Academy of Sciences calls an "utter lack of studies" that might show how physical exertion and other factors interrelate to affect risk.

BACKGROUND

The Congressional Review Act (CRA) was made for regulations such as the Department of Labor's ergonomics rule. The CRA passed Congress with bipartisan support and was signed into law by President William Jefferson Clinton in 1996. The Act gives Congress and the President a clear method for invalidating overly burdensome regulations. Each house must pass a joint resolution disapproving a regulation. Once passed, the joint resolution is sent straight to the President (no conference committee is required). If the President signs the resolution, the regulation is deemed never to have been in effect and the responsible agency is prohibited from writing another regulation that is "substantially the same" without intervening congressional authorization.

The promulgation of the ergonomics rule has been as disastrous as its substance. While using taxpayer money to pay for expert testimony that supported OSHA policy, the agency insisted on abbreviated public comment periods that lessened the input of taxpayers as it drove toward its goal of completing the regulation before the end of the Clinton Administration. Candid remarks by one of the regulators chiefly responsible for this rule reveal how this regulation became such a monstrosity:

> "I love it; I absolutely love it. I was born to regulate. I don't know why, but that's very true. As long as I'm regulating, I'm happy."
>
> [Lisa Junker, "Marthe Kent: A Second Life in the Public Eye," *The Synergist*, May 15, 2000, p. 30.]

In fact, the ergonomics rule is part of a consistent pattern of regulatory overreach at OSHA and the Department of Labor.

- In 1999, OSHA told employers they could be fined or sued for unsafe conditions in their telecommuters' home offices. According to the Employment Policy Foundation, this would amount to a $22.5 billion tax on telecommuting, or more than $1,000 for each of the nation's 21 million telecommuters.

- Also in 1999, the Department of Labor announced a policy that would mean the end of stock options for hourly workers (but leave salaried workers' stock options intact). Congress moved quickly to overturn that policy.

BILL PROVISIONS

The one-page joint resolution states:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress disapproves the rule submitted by the Department of Labor relating to ergonomics (published at 65 Fed. Reg. 68261 (2000)), and such rule shall have no force or effect.

ADMINISTRATION POSITION

In a Statement of Administration Policy issued March 6, 2001, the Bush Administration indicated the President supports S. J. Res. 6.

COST

Cost estimates of the ergonomics regulation vary. Predictably, OSHA's estimates are lowest and are dwarfed by other estimates from within and outside government.

- **The Occupational Safety and Health Administration has estimated its ergonomics rule would cost employers only $4.2 billion per year** and even yield $9 billion in annual employer savings.

- However, a study done on behalf of **the Small Business Administration estimated "the costs of the proposed standard could be anywhere from 2.5 to 15 times higher than those estimated by OSHA"** [Policy Planning & Evaluation, Inc., *Analysis of OSHA's Data Underlying the Proposed Ergonomics Standard And Possible Alternatives Discussed by*

the SBREFA Panel 3/2/99 - 4/30/99, September 22, 1999, http://www.sba.gov/ADVO/er_ppe.pdf, p. 47]. Even the lower bound of this estimate shows the rule's costs outweigh its benefits.

- Private estimates put the cost even higher. **The Employment Policy Foundation figures the rule could cost job-creating businesses $126 billion annually** (http://www.epf.org/press/2000/nr20001106.pdf). (For a state-by-state analysis of the rule's cost, see http://www.epf.org/documents/ergocost.html.)

- Regulations are simply taxes by any other name. **This crushing regulation would completely wipe out the benefits of President Bush's proposed tax cut.**

OTHER VIEWS

A March 1, 2001, letter signed by Senator Ted Kennedy and 22 other Democrat Senators urges Senators to uphold the rule. The letter incorrectly claims that if Congress invalidates the rule under the Congressional Review Act, OSHA will be forbidden to revisit ergonomics without intervening congressional authorization.

In fact, OSHA may revisit ergonomics without intervening congressional action. But OSHA may not issue a regulation that is "substantially the same" as the current rule.

POSSIBLE AMENDMENTS

Under the Congressional Review Act of 1996, no amendments are permitted.

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